Cur. Adv. Vult.

Abbott, J. : — This is an appeal from the Magistrate in Seremban. The appellant is a dealer in watches and he was charged in the lower Court with having contravened section 114(i)(e) of the Customs Enactment in that he was knowingly in possession of a valuable gold wrist watch on which customs duty had not been paid. There was evidence that the watch had been purchased in Singapore by a person giving his name as "Mr. E. Brown" — a receipt to this effect was produced in the lower Court. Ten days later the purchaser sold it to the appellant and received, as part payment, another watch of far less value. The appellant's premises were visited by customs officials who took possession of the watch together with the receipt for its purchase in Singapore and initiated proceedings against the appellant in the lower Court. The Magistrate accepted the fact that the appellant had bought the watch from Mr. Brown and, apparently, accepted the appellant's statement to the effect that when he purchased the watch he did not know whether customs duty had been paid on it or not. By the requirement of section 114(ii) of the Customs Enactment No. 5 of 1936, the onus of proving that he did not know that customs duty had not been paid lay upon the appellant. The Magistrate, in convicting the appellant, does not appear to have given his attention to this onus and seems to have convicted the appellant for having been in mere possession of the watch without knowing whether the customs duty had been paid or not. The actual matter for determination was, of course, a matter of guilty knowledge and this should have been considered in the light of the decisions in *Rex v. Aves*[1] and *Rex v. Carr-Braint*[2]. In all the circumstances I consider that this is a proper case for a re-trial and I so order. The re-trial is to be held by the President of the Sessions Court, Seremban.

Re-trial ordered.

CHAN CHEN SUM v. NAM LEE & CO.

[App. Civ. Juris. (Wilson, J.) June 20, 1952]

[Kuala Lumpur — Civil Appeal No. 5 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 12 — Application for ejectment.

The respondent in this case applied to the Rent Assessment Board of Kuala Lumpur for permission to apply to any Court for an Order of Ejectment of the appellant from certain premises. This was granted. The appellant contended that the application of the respondent should have been refused by the Board on the grounds that (1) no notice to quit had been given to the respondent before the application was made and; (2) the Board should have found on the evidence before it that there had been a breach of covenant by the applicant.

Held, that (1) where there was no evidence before the Board as to any notice to quit at all, it could not be said that an application to a Court for an Order of Ejectment would necessarily fail; (2) the matter was one which the Board correctly left for determination by any Court to which an application for ejectment may be made.

Case referred to :—

(1) *L. Stanley v. G. B. Bull* (1952) M.L.J. 65.

CIVIL APPEAL.

Ng Ek Teong for the appellant.

Gould for the respondent.

Cur. Adv. Vult.

Wilson, J.: — On the application of the respondent the Rent Assessment Board of Kuala Lumpur gave permission to the respondent under section 12 of the Control of Rent Ordinance, 1948 to apply to any Court for an Order of Ejectment of the appellant from certain premises. It is contended by the appellant that the application of the respondent should have been refused by the Board on the grounds that :—

(1) No notice to quit has been given to the respondent before the application was made and;

(2) That the Board should have found on the evidence before it that there had been a breach of covenant by the applicant.

It has been urged that for these reasons any application to a Court for ejectment must have failed. In support of this Mr. Ng Ek Teong has relied on my judgment in the case of *L. Stanley v. G. B. Bull*[1]. That was a case of an Originating Summons for an Order of *Certiorari* that the proceedings before the Rent Assessment Board be quashed. Since that case was decided the law has been altered by the Control of Rent (Amendment) Ordinance, 1952, which allows an appeal on any point of law from any decision of the Rent Assessment Board. This in itself clearly alters the position and apart from that the circumstances in the case now before me are different to those in the case then before me. In the previous case there was evidence that the notice to quit was clearly bad, and for that reason, amongst others, I refused to interfere with the decision of the Rent Assessment Board refusing permission to proceed for ejectment on the ground that the application for ejectment must have failed.

In the present case there was no evidence before the Board as to any notice to quit at all. There may or may not have been a valid notice to quit, and in the absence of any evidence on the subject I am unable to say an application to a Court for an Order of Ejectment would necessarily fail. So far as concerns the contention by the appellant that there has been a breach of covenant by the respondent for ejectment I am satisfied that the matter is one which the Board correctly left for determination by any Court to which an application for ejectment may be made.

The appeal is dismissed with costs.

Appeal dismissed.

YAP CHOO NEO (w) v. CHENG LAN LIM.

[Orig. Civ. Juris. (Knight, J.) June 27, 1952]

[Singapore — Suit No. 982 of 1951]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(b) — Waiver of breach of covenant by accepting rent — Sub-letting — "Hardship".

The plaintiff claimed possession as landlord of certain premises known as the "Katong Resthouse" together with arrears of rent and mense profits. She based her claim on the defendant's alleged breach of an obligation on his lease not to sub-let, and maintained that as she wanted the premises for a family residence the Court should reasonably grant her an order for possession in terms of section 14(b) of the Control of Rent Ordinance, 1947. The plaintiff stated that the defendant had in fact committed two breaches of his covenant, (a) by sub-letting the premises to a partnership — of which he was the managing partner, and (b) by subletting part of the premises to an R.A.F. officer and his wife.

The defendant did not deny that his lease prohibited sub-letting without his landlord's consent, but maintained that the R.A.F. officer and his wife were mere lodgers — not tenants — and that sub-letting to the partnership, if indeed such subletting constituted a breach of his covenant, was waived by his landlord-plaintiff who at all material times knew that the Resthouse was in fact being managed by a partnership.

Held, that (1) the plaintiff had waived the defendant's breach by accepting rent from the partnership; (2) the hardship on the plaintiff cannot reasonably suffice to deprive the defendant and his partners of the profit which their capital and hard work might make it possible for them to reap.

Case referred to:—

(1) *Walrond v. Hawkins* (1874) L.R. 10 C.P.C. 342.

CIVIL SUIT.

N. L. Macassey for the plaintiff.

R. L. Eber for the defendant.

Cur. Adv. Vult.

Knight, J.: — In this suit the plaintiff, who is an elderly Chinese lady, claims possession as landlord of certain premises situated at No. 107 Marine Parade, Singapore, which are known as "the Katong Resthouse" — together with arrears of rent and mesne profits. She bases her claim on the defendant's alleged breach of an obligation of his lease not to sub-let and maintains that as she wants the premises for a family residence the Court should reasonably grant her an order for possession in terms of section 14(b) of the Control of Rent Ordinance (No. 25 of 1947).

As to sub-letting, the plaintiff states that the defendant has in fact committed two breaches of his covenant (1) by sub-letting the premises to a partnership — of which he was the managing partner and (2) by sub-letting part of the premises, i.e., Room No. 14 and a landing outside this room to an R.A.F. officer and his wife (F/Lt. & Mrs. Wright) during part of the period covered by the lease.

The defendant does not deny that his lease prohibits sub-letting without his landlord's consent (which he has not obtained) — but he maintains that the Wright family were mere lodgers — not tenants — and that the sub-letting to the partnership, if indeed such sub-letting constituted a breach of his covenant, was waived by his landlord, the plaintiff, who at all material times knew that the Resthouse was in fact being managed by a partnership. As to whether it is reasonable for the Court to make an order for possession the defendant says that very considerable sums have been paid from partnership funds for renovating and repairing the premises and it would be manifestly unfair that the partnership should be deprived of the chance of reaping any reward for the money its members have spent.

The issues before the Court are thus fourfold:—

(1) Is the partnership a sub-tenant and if so, has a covenant of the lease been breached?

(2) If yes, is the plaintiff's right barred by waiver?

(3) Was the Wright family living in the premises as sub-tenants or merely lodgers in premises over which the defendant had never lost control? and

(4) In all the circumstances of the case, is it reasonable for the Court to make an order for possession?

The first and second of these issues, in my opinion, permit of some simplification as I propose to assume in the first place that the partnership was a sub-tenant and that the sub-letting of the premises to it by the defendant did in fact commit a breach of the defendant's covenant in his lease. In short, I shall